4312

SUPREME COURT OF THE UNITED STATES.

No. 133.

LEWIS TEESE AND LEWIS TEESE, JR., PLAINTIFFS IN ERROR,

vs.

C. P. HUNTINGDON AND MARK HOPKINS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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Gideon, Printer.

UNITED STATES OF AMERICA,
Northern District of California.

Pleas before the judges of the circuit court of the United States for the districts of California, in and for the northern district, at the court-house in the city of San Francisco, on the twentieth day of October, of August special term, in the year of our Lord one thousand eight hundred and fifty-seven.

Witness the Honorable M. Hall McAllister, judge of said court, the Honorable Ogden Hoffman, U. S. district judge.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

Be it remembered, that at the August special term, in the year of our Lord one thousand eight hundred and fifty-seven, before the Honorable M. Hall McAllister, judge of the circuit court of the United States for the districts of California, and the Honorable Ogden Hoffman, judge of the district court of the United States for the northern district of California, at the court-house in the city of San Francisco, came Lewis Teese, and Lewis Teese, jr., by C. H. S. Williams, Shafter and Park, esq's, their attorneys, and brought into said court before the aforesaid judges thereof their certain bill, complaint or declaration, against C. P. Huntingdon and Mark Hopkins, defendants, of a plea of infringement of a patent, which said bill was filed March 18th, A. D. 1856, and follows in these words, that is to say:

In the Circuit Court of the United States for the districts of California.

LEWIS TEESE and LEWIS TEESE, JR., vs. C. P. HUNTINGDON and MARK HOPKINS, doing business in the city of Sacramento under the firm and style of Huntingdon, Hopkins and Company.

The complaint of the plaintiffs above named respectfully shows to this court, that they, as well as the defendants, are residents of the State of California; that they, the said plaintiffs, were the true and original inventors of a new and useful improvement in forks for gold diggers, such forks being the instruments called sluice forks, used for the purpose of removing stones from sluices and sluice-boxes in gold washing; that said improvement was not known or used before their application for letters patent.

That they being such inventors, as aforesaid, did apply to the Commissioner of Patents of the United States for letters patent of such invention; that they fully and in all respects complied with all the requisitions of law in that behalf, and especially made oath that they verily believed themselves to be the true and original inventors and discoverers of such improvement; that they also paid into the Treasury of the United States the sum of thirty dollars, and presented to the said Commissioner a petition setting forth their desire to obtain an exclusive property in said improvement, and praying that letters patent might for that purpose be granted to them; that they also delivered and filed in the Patent Office a written description of their said invention and discovery, and of the manner of using the same, and accompanied the same by a model of their said improvement and invention, with drawings thereof, and written references in full, clear and exact terms, so as to distinguish the same from all other things before known, and so as to enable any person skilled in the art with which said invention is most nearly connected, to use such improvement and make such forks; that said description was duly signed by the plaintiffs and attested by two witnesses; that on the 27th day of February, 1855, letters patent for said improvement in due form of law, under the seal of the Patent Office of the United States, signed and countersigned by the proper officers of the United States, and bearing date on the said 27th day of February, were granted, issued, and delivered to these plaintiffs, whereby was granted and secured to them, their heirs, administrators or assigns, for the term of fourteen years from the 27th day of November, 1854, the full and exclusive right and liberty of making, constructing, using and vending to others to be used, the said improvement—the fork so improved being designated and described in said letters patent, and the schedule annexed thereto, and forming a part of the same as follows:

"A new and useful improvement on the machines called sluice forks, used for the purpose of removing stones from sluices and sluice-boxes in gold washing. The fork as so improved has eight tines or prongs, thirteen inches long from heel to point; the tops of the tines are triangular shaped, so that the smallest particle of gold cannot lodge on them; the bottoms of the tines or prongs are a flat even surface, so that the fork will slide easily, and not wear out the sluice-boxes; the curve in the tines or prongs is two inches; the fork from outside to outside 9 inches; the same breadth heel and point; the tines taper very little from heel to point, the points blunt. The weight of fork, with handle, about five pounds, made of cast-steel. The improvement claimed and patented as aforesaid being, making the fork tines triangular, with one side of the triangle forming the back of the tines, for the purpose and in the manner set forth in their specification, whether applied to more or less number of tines or length or breadth of fork, as by the said

letters patent, now ready to be produced, will more fully and at large appear."

And the plaintiffs further show, that from the time of the making of said letters patent they have, by themselves, their servants, and agents, made and vended their said invention and improvement; and that, by the manufacture and sale of said forks, as improved by the invention of said plaintiffs as aforesaid, they have realized large profits and gains; that the said defendants, well knowing the premises and rights of the plaintiffs, but contriving and wrongfully and unjustly intending to injure the said plaintiffs, and to deprive them of the profits, benefits, and advantages which they might and otherwise would have derived and acquired from making and vending the said improved fork, after the making of said letters patent, and within the term of years in the said letters patent mentioned; and on or about the 2d day of July, 1855, and on divers other days and times between that day and the commencement of this action, and within the United States, unlawfully and unjustly, without the leave or license, and against the will of the plaintiffs, or either of them, vended and sold certain large numbers of the said improved fork, in imitation of the said improvement and invention of the plaintiffs as aforesaid, in breach of the said letters patent, and against the privilege so granted to the plaintiffs as aforesaid, whereby the said plaintiffs have been and are greatly injured and deprived of a great part of the profits and advantages which they might and otherwise would have derived and acquired from the said invention and improvement, and they have sustained damages thereby and by the acts of the defendants in the premises to the amount of $5,000.

Wherefore the said plaintiffs pray for judgment against the defendants for the said sum of $5,000 and costs of this action.

C. H. WILLIAMS, SHAFTER & PARK,
Attorneys for Plaintiffs.

Endorsed: Filed March 18th, A. D. 1856.
GEO. PEN JOHNSTON,
Clerk.

Summons.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States for the districts of California.

Action brought in the said circuit court and the complaint filed in the city and county of San Francisco, in the office of the clerk of said circuit court.

LEWIS TEESE et al., Plaintiffs,
vs.
C. P. HUNTINGDON et al., Defendants.

The President of the United States of America, greeting, to C. P. Huntingdon and Mark Hopkins, doing business in the city of Sacramento, under the firm and style of Huntingdon, Hopkins and Company:

You are hereby required to appear in an action brought against you by the above named plaintiff in the circuit court of the United States for the districts of California, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons) in the office of the clerk of said court, in the city and county of San Francisco, within ten days (exclusive of Sundays and the day of service) after the service on you of this summons, if resident, and served within this county, or if resident, and served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to recover damages for the infringement of a certain patent granted to the plaintiffs for sluice forks, (more particularly described in the complaint;) said damages being claimed in the sum of five thousand dollars; also costs of this action. And if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you and each of you.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, this [SEAL.] 19th day of March, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eightieth.

Attest: GEO. PEN JOHNSTON,
Clerk.

OFFICE OF THE MARSHAL
Of the Northern District of California, ss.

I hereby certify that I received the within summons on the 19th day of March, A. D. 1856, and personally served the same on the 20th day of March, A. D. 1856, by delivering to C. P. Huntingdon and Mark Hopkins, said defendants, personally, in the city and county of Sacramento, a copy of said summons, attached to a certified copy of the complaint.

Dated San Francisco, this 21st day of March, A. D. 1856.

WM. H. RICHARDSON,
U. S. Marshal.

By E. C. PALMER,
Deputy Marshal.

Endorsed: Filed this 26th day of March, A. D. 1856.
GEO. PEN JOHNSTON, *Clerk.*

Answer.

And afterwards, to wit, on the 10th day of May, in the year 1856, aforesaid, came the said defendants, and made answer as follows, to wit:

In the Circuit Court of the United States for the districts of California.

LEWIS TEESE and LEWIS TEESE, Jr.,
vs.
C. P. HUNTINGDON and MARK HOPKINS, doing business in the city of Sacramento under the firm and style of Huntingdon, Hopkins & Co.

And the said defendants, by Levi Parsons, their attorney, come and defend the wrong and injury (in the complaint in this action) alleged against them, and make their defence to said action, and say and allege that they are not guilty of the said supposed grievances, nor any of them, nor of the wrong and injury laid to their charge, nor any part thereof, in manner and form as the said plaintiffs have in their said complaint complained against these defendants in this action; and of this these defendants put themselves upon the country, &c.

And for a further plea in this behalf, the said defendants allege and say, that the plaintiffs ought not to have or maintain their said action, because these defendants say and aver that the supposed improvement and invention in the complaint mentioned to be secured by the plaintiffs by letters patent were known and used by divers other persons in the United States long before the supposed discovery or invention thereof by the plaintiffs, and before their supposed application for letters patent. Without this, that the plaintiffs were the true and original inventors of said supposed improvement. And this defendants are ready to verify, and pray judgment, if the plaintiffs shall have or maintain their said action against them.

And for a further plea and answer the said defendants allege and say, that the said pretended improvement and invention in the said complaint mentioned, was not at the time of the application of said plaintiffs for said letters patent, or at any other time, a patentable subject within the true intent and meaning of the patent laws of the United States, nor could a patent be granted for the same, as set forth in the complaint in this action, in manner and form as the plaintiffs have therein complained and alleged in that behalf; and of this defendants put themselves upon the country, &c.

May 10th, 1856.

LEVI PARSONS,
Attorney for Def'ts.

Due service of a copy of the within answer is hereby acknowledged.

May 10th, 1856.

C. H. S. WILLIAMS, SHAFTER & PARK,
Attorneys for Plaintiffs.

Endorsed: Rec'd and filed May 10th, A. D. 1856.

GEO. PEN JOHNSTON, *Clerk.*

Substitution of H. C. Clark as Attorney for Defendants.

And afterwards, to wit, on the 7th day of July, A. D. 1856, come the attorney for defendant and filed the following agreement of substitution of attorney, to wit:

United States Circuit Court for the districts of California.

LEWIS TEESE et al.
vs.
C. P. HUNTINGDON et. al.

I hereby consent to the substitution of Hiram C. Clark as attorney for the defendants in this action, and that he become the attorney of record for them in all future proceedings in this cause.

Dated July 7th, A. D. 1856.

LEVI PARSONS.

Endorsed: Filed July 7th, 1856.

GEO. PEN JOHNSTON, *Clerk.*

Order for substitution of Att'y of Record, &c.

And afterwards, to wit, on the 7th day of July, A. D. 1856, the following order was entered, to wit:

At a stated term of the circuit court of the United States of America, for the districts of California, held at the court-house in the city of San Francisco, on Monday, the 7th day of July, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Honorable M. Hall McAllister, judge of said court.

LEWIS TEESE et al.
vs.
C. P. HUNTINGDON et al. } Common Law.

And now at this day, on motion of Hiram C. Clark, esq., it is ordered that said Hiram C. Clark be substituted as the attorney of record for the defendants in this cause, on filing the written consent of Levi Parsons, esq., in the clerk's office of this court to such substitution, said Levi Parsons being now the attorney of record for the defendants in this cause.

Endorsed: Filed July 7th, 1856.

GEO. PEN JOHNSTON, *Clerk.*

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Plaintiffs' Bill of Exception.

And afterwards, to wit, on the 21st day of November, 1857, come the plaintiffs by their attorneys, and filed their bill of exceptions in the words and figures following, to wit:

In the Circuit Court of the United States for the districts of California.

NORTHERN DISTRICT.

LEWIS TEESE & LEWIS TEESE, JR., }
vs. }
C. P. HUNTINGDON & MARK HOPKINS. }

Afterwards, to wit, before the said court, on 20th October, 1857, before the Honorable M. H. McAllister, circuit judge of the said circuit court, come as well the said Lewis Teese & Lewis Teese, jun'r, by Williams, Shafter & Park, their attorneys, as the said C. P. Huntingdon and Mark Hopkins, by their attorny, Hall McAllister, and the jurors of the jury whereof mention is within made, being called, likewise come, and after being elected, tried and sworn to try the issues within joined, the counsel for the said plaintiffs proceeded to introduce and did introduce evidence tending to prove all the allegations contained in their said declaration. And for the purpose of proving the damages by them sustained, by reason of the said alleged infringement, the said plaintiffs by their counsel offered Fletcher M. Haight, an attorney and counsellor at law, as a witness to prove what would be a reasonable counsel fee for the preparation and trial of said action on the part of the plaintiffs; but to the introduction of said evidence, the said defendants by their counsel did then and there object, and insisted that counsel fees were not recoverable as damages in the said action; and thereupon the said plaintiffs, by their counsel, did insist that counsel fees were recoverable as actual damages sustained by the said plaintiffs, by reason of the grievances alleged in the said declaration. And the said court did then and there decide that counsel fees could not be recovered as actual damages sustained by plaintiffs in said action, and excluded the testimony so offered as aforesaid, to which said opinion and decision the said plaintiffs, by their said counsel, did then and there except. The evidence on the part of the plaintiffs having been closed, the said defendants, by their said counsel, to maintain the issues on their part, offered in evidence the deposition of J. S. King, taken at Raynham, Massachusetts, under a commission, and tending to prove that the plaintiffs were not the first inventors of the improvement patented. To the introduction of said deposition the counsel of the plaintiffs objected, that no sufficient notice had been given under the 15th section of the act of Congress relating to patents, and passed July 4th, 1836. The objection to foregoing testimony was based on the following grounds:

1st. That the first notice of special matter served by defendants upon plaintiffs, dated August 28th, 1856, (a copy of which is hereinafter inserted,) did not accord with the proof offered.

2d. That the second notice of special matter served by defendants on plaintiffs, and dated and filed in court Sept. 19, 1857, (a copy of which is hereinafter inserted,) was so filed and served without any order from the court, and therefore should be disregarded.

In connection with said objection, it appeared that on the 28th day of August, 1856, the said defendants gave a notice of special matter to the plaintiffs; which said notice was in the words and figures following, viz:

In the Circuit Court of the United States for the districts of California.

LEWIS TEESE and LEWIS TEESE, Junior,
vs.
C. P. HUNTINGDON et al.

To Lewis Teese & and Lewis Teese, jr., in the above named action; to C. H. S. Williams, Shafter & Park, attorneys for plaintiffs:

GENTLEMEN: You will please take notice, that under the general issue heretofore pleaded in this action by the defendants, that in pursuance of an act of the Congress of the United States of North America, entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," approved July fourth, eighteen hundred and thirty-six, the defendants, on the trial of this cause, under section fifteen of said act, will introduce the following witnesses on behalf of the defendants to prove the previous invention, knowledge, and use, and also to prove the previous use and knowledge of the forks in said complaint named, and also of the sluice forks therein named, long before the pretended discovery or invention of the same by plaintiffs.

The names of said witnesses, the places of residence of said witnesses, and the various places and localities where the said forks or sluice forks in the complaint named have been used, known, made, invented and sold, are hereby given and enumerated, as follows, namely:

Luther Gaylord, a witness who now resides in Naugatuck, county of New Haven, in the State of Connecticut, in the United States of North America. By this witness the defendants in this action will prove on the trial of this cause, that the mining or sluice forks, in the complaint named, (sometimes called potato forks,) and forks of nearly the same pattern, sharp in front, and being only partially flattened on the back, were well known and made, manufactured, used, invented, bought, and sold, at a place

called Clinton, in the county of Worcester, State of Massachusetts, in the United States aforesaid, and in the cities of Boston, New York, and Philadelphia, long before the pretended discovery or invention by plaintiffs of the same, and before the application by plaintiffs for any letters-patent for the same, as set forth in the complaint in this action, and in their letters-patent, and before the granting of said letters-patent.

J. S. King, whose first name is to defendants unknown, a witness who now resides in Raynham, in the county of Bristol, in the State of Massachusetts, United States aforesaid. By this witness the defendants in this action will prove, on the trial of this cause, that the mining or sluice forks, in the complaint named, (sometimes called potato forks,) and forks of nearly the same pattern, sharp in front, and being only partially flattened on the back, were well known, and made, manufactured, used, invented, bought and sold, at the place called Raynham, last mentioned, in the State last aforesaid, and in the cities of Boston, New York, and Philadelphia, long before the pretended discovery or invention by plaintiffs of the same, and before the application by plaintiffs for any letters-patent for the same, as set forth in the complaint in this action, and in their letters-patent, and before the granting of said letters-patent.

[NOTA BENA.—Also please to take notice, that owing to misinformation which the defendants received from the State of New York, they were accidentally misled as to the residence of said J. S. King, and therefore misstated his place of residence, and the place where the forks were used, known, &c., and laboring under the mistake, issued a commission to said King at Philadelphia, and also gave their former notice respecting said King, which is now withdrawn as to said King, and this notice is substituted in place of the former notice as far as that notice related to said J. S. King.

* * * * * * * * *

Dated August 28th, 1856.

Yours, &c.,

HIRAM C. CLARK,
Att'y for Def'ts.

And the witness in his said deposition testified that he was a fork manufacturer at Raynham, Massachusetts, and had made forks with the said improvement 13 years ago, but did not state where he had made them, and that he had sold them in Boston, Providence, Rhode Island, and elsewhere.

It further appeared, however, that on the 19th day of September, 1857, and after the said deposition had been returned and filed in court, that the said defendant gave a supplementary notice

of special matter to the plaintiffs, which said notice was in the words and figures following, viz:

In the Circuit Court of the United States for the districts of California, northern district of said State.

LEWIS TEESE and LEWIS TEESE, JR., vs. C. P. HUNTINGDON and MARK HOPKINS, doing business in the city of Sacramento, under the firm and style of Huntingdon, Hopkins & Co.

To Messrs. WILLIAMS, SHAFTER & PARK,
Attorneys for above named Pl'ffs.

GENTLEMEN: Please take notice that upon the trial of the above entitled cause the defendants will give in evidence, under the general issue, the following special matter, to wit:

1st. A statute of the United States of America, entitled "An act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," approved July fourth, 1836.

2d. That the plaintiffs were not the original or first inventors or discoverers of the "improvement in forks for gold diggers," for which they in their complaint allege they have obtained a patent, nor of the improvement specified in their complaint as patented, namely, "the making the fork tines triangular, with one side of the triangle forming the back of the tines," nor of the forks, or the sluice forks, described in said complaint as patented, nor was either of them such inventor or discoverer, but that anterior to the supposed invention or discovery of the aforesaid improvement in forks for gold diggers, and of the aforesaid improvement in the making of the tines and backs of forks, and of the aforesaid forks or sluice forks, the same, and each and all of same, and the whole of same, were invented, known and used.

The names and places of residence of those whom defendants intend to prove to have possessed a knowledge of the aforesaid thing and things claimed by plaintiffs as patented, and of the whole thereof, prior to that of the said alleged patentees, and the places where the same have been used prior to the supposed invention or discovery of the same by said alleged patentees, are as follows:

Jahaziah S. King. This witness resides at Raynham, in the county of Bristol, State of Massachusetts, United States of America.

By this witness defendants intend to prove that the said forks in the complaint named, and forks of substantially the same pattern, and the said thing and things claimed by plaintiffs as patented, and the whole thereof, were well known and made, manu-

factured, used, invented, bought and sold, at the aforesaid place called Raynham, and in the cities of Boston, State of Massachusetts, New York, State of New York, Providence, State of Rhode Island, and elsewhere in the United States, anterior to the supposed invention or discovery of same by said plaintiffs, and before their application for any letters patent for same.

Also, that said King made a fork with a tine in the following shape ( ) fifteen years ago, and a fork with the tine of the following shapes ( ) thirteen years ago, and sold them in Boston, Providence, and elsewhere. That said King made a fork with a tine of the following shape ( ) about six years previous to 21st October, 1856, and sold them in New York, Boston and elsewhere. * * * * * * * * *

Luther Gaylord. This witness resides at Naugatuck, in the State of Connecticut. By this witness defendants intend to prove that the said forks in the complaint named, and forks of substantially the same pattern, and the said thing and things claimed by plaintiffs as patented, and the whole thereof, were well known and made, manufactured, used, invented, bought and sold, in Clinton, Massachusetts, in Worcester, Massachusetts, in Boston, Massachusetts, in Naugatuck, Connecticut, at sundry other places in the States of Massachusetts and Connecticut, in New York, State of New York, and elsewhere in the United States, anterior to the supposed invention or discovery of same by said plaintiffs, and before their application for any letters patent for same.

And, also, that about ten years ago one fork was brought to the shop of said Gaylord in Clinton, Massachusetts, to be repaired. This was a four-tined manure fork, with a triangular tine, having the back of the tine flat, and triangular on the top. It had been used a long time when it was brought to said Gaylord to be repaired. * * * * * * * * *

H. L. Hind. This witness resides at Placerville, Eldorado county, California.

By this witness defendants intend to prove that the said forks in the complaint named, and forks of substantially the same pattern, and the said thing and things claimed by plaintiffs as patented, and the whole thereof, were well known and made, manufactured, used, bought and sold, at Placerville, Eldorado county, California, and at sundry other places in the State of California, anterior to the supposed invention or discovery of same by said plaintiffs, and before their application for any letters patent for same.

Also, that said Hind made triangular forks for taking bark out of tan vats at Charleston, Clark county, State of Indiana, in the year 1849 or 1850, and anterior to the supposed invention or discovery claimed by plaintiffs in this action, and before their application for any letters patent for same. * * * *

Defendants also intend to introduce in evidence on the trial of this action one or more diamond-tined forks, the bottoms of the tines of which have been worn flat by use (which fact defendants intend to prove,) so that said tines have become five-sided or triangular shaped.

Defendants desire to notify you that this notice is intended as amendatory of and additional to the previous notices of special matter to be proved by them, heretofore served on you, and that wherever said previous notices conflict with this notice the said previous notices are hereby and to that extent withdrawn; otherwise said previous notices are to stand in full force and effect.

Dated San Francisco, September 19th, 1857.

HALL McALLISTER,
Att'y for Def'ts.

On the aforesaid facts the said court overruled the aforementioned objections raised by plaintiffs' counsel, to which decision of the said court the said counsel of the said plaintiffs did then and there except, and thereupon the whole of said deposition was read in evidence to the jury by the said counsel for the defendants.

The defendants, further to maintain the issue on their part, offered in evidence the depositions of Luther Gaylord, of Naugatuck, in the State of Connecticut, also taken under a commission; to the introduction of which deposition the plaintiffs, by their said counsel, objected that no sufficient notice had been given under the said 15th section of the act of Congress aforesaid. This objection was based on the two following grounds:

1. That the first notice of special matter served by defendants on plaintiffs, dated August 28th, 1856, (a copy of which is hereinbefore set forth,) did not accord with the proof offered.

2. That the second notice of special matter served by defendants upon plaintiffs, dated and filed in court September 19, 1857, (a copy of which is hereinbefore set forth,) was so served and filed without any order from the court, and therefore must be disregarded.

And in connection with the hearing on said objection, it appeared that on the 28th day of August, 1856, the said defendants, gave the notice to the plaintiffs hereinbebefore set forth.

And the said witness, in his deposition, testified that 4 or 5 years ago he saw forks made after the manner of the patent of said plaintiffs on exhibition at an agricultural fair at Worcester, in the county and State aforesaid.

It further appeared, however, that on the 19th day of September, 1857, and after said deposition had been returned and filed in court, a supplementary notice was given by the said defendants to the said plaintiffs, a copy of which said notice is hereinbefore set forth.

On the aforesaid facts the said court overruled the last mentioned

objections raised by plaintiffs' counsel; to which decision the said plaintiffs by their said counsel then and there excepted, and thereupon said deposition was read in evidence to the jury.

The defendants, further to maintain the issue on their part, offered H. L. Hind as a witness for the purpose of proving that the said patented improvement had been made, invented and used, bought and sold, at Charleston, in the State of Illinois, and at Placerville, in the State of California, before the alleged invention thereof by the plaintiffs.

To the introduction of this evidence the plaintiffs objected that no sufficient notice had been given under the 15th section of the act of Congress aforesaid.

This objection was based on the following grounds:

1. That the second notice of special matter served by defendants on plaintiffs, dated and filed in court September 19th, 1857, (a copy of which is hereinbefore set forth,) was so served and filed without any order from the court, and must therefore be disregarded.

And thereupon the said court overruled the last mentioned objection raised by plaintiffs' counsel, to which decision of said court the said plaintiffs then and there excepted, and thereupon the said witness testified to the jury, and to matters and things tending to prove the points so embraced in the notice aforesaid.

While the said Hind was being examined in chief by the said counsel of said defendants, the said counsel proposed to prove by said witness that the tines of a diamond-tined fork, having one of the four angles on the back of the tine, would by use and wear become flat on the back of said tines, like unto the patented improvement of the plaintiffs. To the introduction of said testimony the said counsel of said plaintiffs then and there objected, on the ground that it was irrelevant to the issue.

The said court did then and there decide that the said testimony was admissible; to which decision the said counsel of said plaintiffs did then and there except, and thereupon the said witness gave evidence tending to prove that the effect of use was to wear such diamond tines flat on the back.

After the testimony for the defence was closed the said counsel for the plaintiffs called a witness for the purpose of impeaching the credit of one Jesse Morrill, who had as a witness in said case given material evidence for the defence on said trial; and the said witness so called as aforesaid, testified that he knew the said Morrill, and knew those who knew him, and that both he and said Morrill resided in the city of Sacramento, in the State of California, and thereupon the said counsel of said plaintiffs inquired of the witness as follows:

What is the general reputation of Jesse Morrill for moral character?

To the said question the said counsel of said defendants then and

there objected, on the ground that the inquiry should be limited to the general reputation of said Morrill for truth and veracity, and whether the witness would believe the said Jesse Morrill on his oath.

The court sustained the said objection and excluded the testimony, to which decision the said plaintiffs by their said counsel then and there excepted.

The said counsel of said plaintiffs then called another witness, who testified that he had resided in the said city of Sacramento with the said Jesse Morrill, from 1850 to 1852 or 1853; that he knew him and had had business transactions with him in said city in 1852 or 1853.

The said counsel of said plaintiffs thereupon requested of said witness to state if he knew what was the reputation of said Morrill for truth and veracity?

To which question the witness replied, "that he had no means of knowing what it was, not having had any transactions with him, and not having resided in Sacramento since 1852 or 1853." Thereupon the said counsel of said plaintiffs asked the said witness to state, if he knew, what was the reputation of said Morrill for truth and veracity in 1852 or 1853.

To which question the said counsel of said defendants then and there objected, on the ground that the dates named in the question were too remote, and that the reputation of the said Morrill at a period less remote from the time of the trial could alone be put in issue. The said objection was sustained by the said court, and the testimony was excluded; to which decision the said counsel of said plaintiffs then and there excepted.

And because none of said exceptions so offered and made to the opinions and decisions of said court do appear upon the record of said trial, therefore, on the prayer of said plaintiffs by their said counsel, the judge of said circuit court hath to this bill of exceptions set his name and seal.

M. HALL McALLISTER, [L. S.]
Judge, &c.

San Francisco, November 21st, 1857.

(*Endorsed:*)

Filed Nov'r 21st, 1857.

GEO. PEN JOHNSTON, *Clerk.*
Per CUTLER McALLISTER, *D. C.*

Proceedings.

And afterwards, to wit, on the 20th day of October, A. D. 1857, the following proceedings were had in said case:

LEWIS TEESE et al.
vs.
C. P. HUNTINGDON et al. } Common Law.

And now, at this day, this cause being regularly called for trial, came the parties herein by the respective attorneys, and the attorney for the plaintiffs moved on the trial hereof, and the following named persons were called, having been summoned as jurors on the venire returned by the U. S. marshal, herein answered to their names, were excused, accepted, rejected, &c., as follows:

O. P. Calloway—accepted; Frank Holcomb—excused by plaintiffs; D. W. Porter—accepted; Wm. B. Edwards—do.; Robert Wells—do.; E. G. Cook—excused by consent of parties; J. C. Wilmerding—accepted; L. F. Haight—do.; John Metcalf—do.; A. W. Stockwell—excused by defendant; Harman Brunning—accepted; S. D. Stone—do.; John C. Bell—excused by defendant; James Gallagher—accepted; T. J. Bayliss—do.; R. H. Adams—do.

The panel being filled, the following named persons were duly empaneled and sworn as jurors herein, viz:

O. P. Calloway, J. C. Wilmerding, S. D. Stone, D. W. Porter, L. F. Haight, James Gallagher, Wm. B. Edwards, John Metcalf, T. J. Bayliss, Robert Wells, Harman Brunning, and R. H. Adams.

The remaining jurors who had answered to their names were excused from further attendance, and thereupon the hearing of said cause was proceeded with. O. L. Shafter, esq., attorney for the plaintiffs, opened the cause to the jury. John Jones, John Ide, Philip Foley, Howard J. Teese, Patrick McGinness, J. A. Carr, F. De Long, and J. D. Hunt were duly sworn and examined as witnesses on behalf of the plaintiffs.

And afterwards, to wit, the cause having proceeded from day to day, on the 26th day of October, A. D. 1857, the following proceedings were had:

LEWIS TEESE et al.
vs.
C. P. HUNTINGDON et al. } Common Law.

And now, at this day, come the parties to this cause aforesaid, by their respective attorneys aforesaid, and also come the jury, heretofore empanelled and sworn herein, and the trial of said cause was further proceeded with, Frederick Teese and J. L. L. F. Warren were duly sworn and examined as witnesses on behalf of the plaintiffs, and W. G. Bonivant, J. C. Coachman, John Wade, Addison Martin, Samuel Young, H. Welch, David Van Pelt, E. S. Perkins, and Levi Keller, were duly sworn and examined on behalf of the defendants. The attorneys for the respective parties agreed to submit the cause to the jury on the evidence, without argument. The evidence being all in, the court charged the jury upon the law of the case, and they retired to their room, in charge of the proper officer, to consult upon their verdict. And now, at

this day, the said jurors came into court, and through their foreman, upon their oaths, do say: "We, the jury, in the case of Lewis Teese et al. vs. C. P. Huntingdon et al., find for the defendants.

"JAS. GALLAGHER,
"*Foreman.*"

Judgment.

And afterwards, to wit, on the 26th day of October, A. D. 1857, the following judgment was entered in said cause:

UNITED STATES OF AMERICA,
State of California.

In the Circuit Court of the United States for the districts of California, in and for the northern district of California.

LEWIS TEESE and LEWIS TEESE, Junior, vs. C. P. HUNTINGDON and MARK HOPKINS, doing business in the city of Sacramento under the firm and style of Huntingdon, Hopkins & Company.	At Common Law. Judgment upon verdict of jury.

This cause being at issue, and having been regularly tried on the issues of law and fact therein before the Honorable M. Hall McAllister, the judge of this court, and a full jury duly empanelled and sworn on the twentieth day of October, A. D. 1857, and having been, after the evidence was closed, submitted to the jury, and the verdict of the jury having been duly rendered and entered thereafter, to wit, on the twenty-sixth day of October, A. D. 1857, whereby the said jury find in favor of the defendants and against the plaintiffs:

Now, therefore, upon motion of the attorney for the defendants, and by virtue of the premises and verdict aforesaid, it is hereby ordered, adjudged and decreed, that Lewis Teese and Lewis Teese, junior, plaintiffs, do not have or maintain their aforesaid action against C. P. Huntington and Mark Hopkins, defendants, and take nothing by reason thereof.

And it is hereby further ordered, adjudged and decreed, that the said C. P. Huntington and Mark Hopkins, defendants, do have and recover of and from the said Lewis Teese and Lewis Teese, junior, plaintiffs, the sum of nine hundred and forty-six and $\frac{70}{100}$ dollars, for the taxed costs and disbursements of them, the said defendants, in this action, and that the said C. P. Huntington and Mark Hopkins, defendants, go hence without day.

Dated San Francisco, California, October 26th, A. D. 1857.

M. HALL McALLISTER,
Judge, &c.

Assignment of Errors.

And afterwards, to wit, on the 7th day of August, A. D. 1858, came the plaintiffs, by their attorneys, and filed in said cause the following assignment of errors, viz:

In the Circuit Court of the United States for the districts of California, northern district.

LEWIS TEESE and LEWIS TEESE, Jr.,
vs.
C. P. HUNTINGDON and MARK HOPKINS.

And now the said plaintiffs assign the following errors in law occurring at the trial; and on the ground of said errors, pray that the said judgment may be reversed, and a new trial ordered and adjudged:

1. Error in law in the exclusion of the testimony of Fletcher M. Haight, as set forth in the bill of exceptions.

2. Error in law in the admission of the depositions of J. S. King, the deposition of Luther Gaylord, and the testimony of H. L. Hind, as set forth in the bill of exceptions.

3. Error in law in excluding the testimony offered by the plaintiffs to impeach the credit of Jesse Morrill, a witness for the defendants, as set forth in the bill of exceptions.

WILLIAMS, SHAFFTER & PARK,
Att'ys for Pl'ffs.

Endorsed: Filed August 7th, 1858.
GEO. PEN JOHNSTON, *Clerk.*

Writ of Error.

And afterwards, to wit, on the 24th day of February, A. D. 1858, the following writ of error was filed in above cause:

UNITED STATES OF AMERICA.

The President of the United States of America to the Judge of the Circuit Court of the United States for the districts of California, northern district, greeting:

Because of the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court for the said northern district, before you, between Lewis Teese and Lewis Teese, jr., plaintiffs, and C. P. Huntingdon and Mark Hopkins are defendants, manifest errors have happened, to the great damage of the said plaintiffs, as by their complaint appears, and it being fit that errors, if any there have been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the

Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January, 1859, in the said Supreme Court to be then and there held, *thus* the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct those errors, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this twenty-fourth day of February, in the [L. S.] year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

GEO. PEN JOHNSTON,
Clerk U. S. Circuit Court dist's of Cal'a.

Endorsed: Filed February 24th, 1858.
GEO. PEN JOHNSTON, *Clerk.*
By CUTLER McALLISTER,
Deputy Clerk.

Citation.

And afterwards, to wit, on the 3d day of May, A. D. 1858, came the plaintiffs, and filed the following citation, as follows:

UNITED STATES OF AMERICA, *ss.*

To C. P. Huntingdon and Mark Hopkins, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the districts of California, northern district, wherein Lewis Teese and Lewis Teese, jr., are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable M. H. McAllister, judge of [SEAL.] the circuit court of the United States for the districts of California, this 24th day of February, A. D. 1858.

M. HALL McALLISTER,
Judge, &c.

STATE OF CALIFORNIA,
Northern District, ss.

Edwin James, being duly sworn, deposes and says, that he served the within writ on C. P. Huntingdon and Mark Hopkins by handing each of them a full and true copy of the same, in the city of

Sacramento, State of California, on the 28th day of April, A. D. 1858, and exhibited this original citation to the said parties respectively.

EDWIN JAMES.

Sworn to and subscribed before me, this 29th day of April, A. D. 1858.

GEO. PEN JOHNSTON, *Clerk.*

I hereby certify that I served this notice upon Hall McAllister, counsel for defendant, by delivering to him personally a copy of the same in the city of San Francisco on the 1st day of May, 1858.

P. S. SOLOMON,
U. S. Marshal Northern Dist. Cal.

San Francisco, May 3d, 1858.

Endorsed: Filed May 3d, 1858.

GEO. PEN JOHNSTON, *Clerk.*
By CUTLER McALLISTER,
Deputy Clerk.

Bond on Appeal.

And afterwards, to wit, on the 24th day of February, A. D. 1858, the following bond on writ of error was filed:

Circuit Court of the United States for the districts of California, northern district.

LEWIS TEESE and LEWIS TEESE, Jr., vs. C. P. HUNTINGDON and MARK HOPKINS.

Know all men by these presents, that we, Lewis Teese, James Grant and William Kohl, are held and firmly bound unto the above named C. P. Huntingdon and Mark Hopkins in the sum of three hundred dollars, to be paid to the said Huntingdon and Hopkins, their executors and administrators, to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 24th day of February, A. D. 1858. Whereas the above named Lewis Teese and Lewis Teese, jr., have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the circuit court of the United States for the districts of California, northern district:

Now, therefore, the condition of the above obligation is such, that if the above named Lewis *Leese* and Lewis Teese, jr., shall prosecute their writ of error to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be

void; otherwise, the same shall be and remain in full force and virtue.

LEWIS TEESE. [L. S.]
JAMES GRANT. [L. S.]
WM. KOHL. [L. S.]

The word "five," on the 12th line from the top, erased, and the word "three" interlined, before signing and sealing, this 24th day of February, 1858.

GEO. PEN JOHNSTON,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

James Grant and William Kohl, the persons named in and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, say, and each for himself deposes and says, that he is worth double the amount specified in said undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

JAMES GRANT,
WM. KOHL.

Subscribed and sworn to before me this 24th day of February, A. D. 1858.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Approved.

M. HALL McALLISTER, *Judge.*

Endorsed: Filed February 24th, 1858.
GEO. PEN JOHNSTON, *Clerk.*
By CUTLER McALLISTER,
Deputy Clerk.

Stipulation.

And afterwards, to wit, on the 8th day of May, came the parties to this suit, by their respective attorneys, and filed the following stipulation, to wit:

In the Circuit Court of the United States for the districts of California, northern district.

LEWIS TEESE and LEWIS TEESE, Jr.,
vs.
C. P. HUNTINGDON et al.

Whereas a writ of error has been filed by the plaintiffs in the above entitled cause, returnable to the Supreme Court of the United States on the second Monday in January, 1859; and whereas a citation has been issued and served in said matter, returnable

also as aforesaid: Now it is hereby stipulated that the said writ and citation shall be taken and deemed as returnable on the first Monday in December, 1858.

May 9th, 1858.

HALL McALLISTER, *Att'y for Def'ts.*
WILLIAMS, SHAFFTER & PARK,
Att'ys for Pl'ffs.

Endorsed: Filed May 8th, 1858.
GEO. PEN JOHNSTON, *Clerk.*

I, Geo. Pen Johnston, clerk of the circuit court of the United States for the districts of California, at San Francisco, do hereby certify the foregoing 47 pages to contain a full, correct, and true transcript of the record of proceedings had in above entitled cause.

In witness whereof, I have hereunto set my hand and the seal of said court this 13th Sept'r, 1858.

[SEAL.]

Attest: GEO. PEN JOHNSTON, *Cl'k.*
Per CUTLER McALLISTER, *D. C.*

Filed 16 Nov., 1858.